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**IN THE SUPREME COURT OF THE STATE OF MONTANA**

**IN THE MATTER OF AUSTIN  
MILES KNUDSEN,**

An Attorney at Law,

Respondent.

) Supreme Court Cause No. PR 23-  
) 0496  
)

) ODC File No. 21-094  
)

) **RESPONDENT'S**  
) **OPPOSED MOTION FOR FIRST**  
) **EXTENSION OF TIME**  
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## INTRODUCTION

Respondent Austin Knudsen respectfully requests a 30-day extension to file his objections to the Commission on Practice’s (“Commission”) October 23, 2024, Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Montana Rule of Lawyer Disciplinary Enforcement 16, Respondent’s objections are currently due November 22, 2024. If this Court grants the extension, Respondent will file his objections on or before December 22, 2024.

Counsel for Respondent contacted the Office of Disciplinary Counsel (“ODC”), which objects to any extension. ODC, however, has no legitimate reason to oppose this modest extension of time. ODC filed its unprecedented 41-count Complaint against Respondent in September 2023— more than two years after the initial grievance was lodged against Respondent. In the wake of that lengthy delay, ODC has no credible claim to urgency now.

This Court should grant Respondent a routine 30-day extension to brief this Court on the Commission’s many errors.

## LEGAL STANDARD

Motions for extension of time are granted as a matter of course and rarely opposed. *See CBI v. Hove*, No. DA 24-0303, 2024 Mont. LEXIS 743, at \*1 (explaining “such requests are routinely granted, and nearly always stipulated to by the opposing parties”). This Court even grants *opposed* extensions in records devoid

of “such a request being made[.]” *Id.* That’s for good reason. The Montana Rules of Appellate Procedure contemplate a single 30-day extension almost as of right. *See* Mont. R. App. P. 26(1) (“In all cases except those addressed in section (2) of this rule, a party may move for and be granted one 30-day extension of time in which to file a brief required or allowed to be filed under these rules.”). Rule 26 even empowers the Clerk of Court to grant unopposed, 30-day extensions without Court input. A “presumption against granting motions for extension of time” only applies in “second or subsequent extensions.”<sup>1</sup> Mont. R. App. P. 26(2).

In the rare event where a party opposes a single, 30-day extension of time, the “good cause” standard governs this Court’s review. Mont. R. App. P. 26(1) (“[T]he supreme court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act[.]”). “Good cause is a more liberal standard than excusable neglect and . . . [i]s intended to provide greater flexibility” for courts to review motions for extension of time. *Nw. Truck & Trailer Sales v. Dvorak*, 265 Mont. 327, 332, 877 P.2d 31, 34 (1994).

This Court defines “good cause” as a “legally sufficient reason” to “show why a request should be granted.” *City of Helena v. Roan*, 2010 MT 29, ¶¶ 13-14, 355 Mont. 172, ¶¶ 13-14, 226 P.3d 601 (citing *Black’s Law Dictionary* 251 (Bryan A.

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<sup>1</sup> The presumption also applies in “proceedings regarding abused or neglected children” and “parenting plans[.]” Mont. R. App. P. 26(2). Neither of which is applicable here.

Garner ed., 9th ed., West 2009)). That standard grants broad discretion to the Court, but—in practice—this Court finds good cause for any reason short of self-inflicted negligence. *Id.* ¶ 14 (mustered the State’s failure to prosecute as insufficient to establish “good cause”).

## ARGUMENT

### **I. Good cause exists to grant Respondent’s request for a 30-day extension of time.**

The Court’s good cause standard—that a legally sufficient reason exists to grant an extension—is a low bar to clear. *City of Helena*, ¶ 14. This Court often grants a 30-day extension of time in unreasoned orders, sometimes without participation from the full Court. *See, e.g., State v. Strang* No. DA 15-0290 (Feb. 19, 2016), 2016 Mont. LEXIS 123, at \*1 (granting a 30-day extension with an unreasoned Order by the Chief Justice alone); *see also Purinton & Co. v. 19th Ave. Props., LLC*, No. DA 15-0717 (Feb. 16, 2016), 2016 Mont. LEXIS 56, at \*1 (granting summary, unreasoned grant of 30-day extension); *City of Libby v. Hubbard*, No. DA 15-0704 (Aug. 4, 2016), 2016 Mont. LEXIS 564, at \*1 (same); *McDonald v. Zink* No. DA 16-0154 (Aug. 17, 2016), 2016 Mont. LEXIS 711, at \*1 (same); *State v. Ellis-Peterson*, No. DA 15-0444 (Feb. 18, 2016), 2016 Mont. LEXIS 105, at \*1 (same); *Barber v. Barber*, No. DA 15-0772 (Feb. 17, 2016), 2016 Mont. LEXIS 101, at \*1 (same); *James T. v. Mont. Dep’t of Pub. Serv. Regulation*, No. DA 20-0313 (Oct. 8, 2020), 2020 Mont. LEXIS 2434, at \*1 (same); *In re J.W.*, No. DA

16-0041 (Aug. 16, 2016), 2016 Mont. LEXIS 744, at \*1 (same); *In re Parenting of B.K. Smalling*, No. DA 19-0310 (Dec. 23, 2019), 2019 Mont. LEXIS 1267, at \*1 (same); *Crawford v. Couture* No. DA 16-0282 (Aug. 15, 2016), 2016 Mont. LEXIS 734 (same); *Junkermier, Clark, Campanella, Stevens, P.C. v. Alborn, Uithoven, Riekenberg, P.C.*, No. DA 15-0605 (Feb. 19, 2016), 2016 Mont. LEXIS 114, at \*1 (same).

Where this Court does make a finding of good cause in granting an extension, a common thread in those cases centers on a party's need for more time to effectively prepare its arguments and the absence of self-inflicted negligence. *See, e.g., In re Marriage of Barrett*, No. DA 19-0513 (Nov. 12, 2019), 2019 Mont. LEXIS 832, at \*1 (finding good cause due to document delays); *Pub. Land/Water Access Ass'n v. Robbins*, No. DA 20-0145 (June 5, 2020), 2020 Mont. LEXIS 1668, at \*1 (granting a 30-day extension due to transcript delays); *but see Newhouse v. Keezer (In re Parenting Plan of S.N.)*, No. DA 22-0563 (Feb. 14, 2023), 2023 Mont. LEXIS 167, at \*1 (finding no good cause when counsel filed motion late).

And when it comes to ODC cases, Respondent is unable to find a single example of the Court denying a request for an extension going back to 2006.<sup>2</sup> But examples of granting extensions abound. *See, e.g., Matter of Pierre Bacheller*, PR

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<sup>2</sup> To be clear, Respondent didn't find a denial in 2006. That's just as far back as counsel had time to research.

06-0461 (granting extension because respondent needed time “to review this matter with counsel and to submit an appropriate response”); *Matter of Marvin Alback*, PR 09-0222 (granting opposed time extension despite respondent’s motion being untimely); *Matter of Roy Johnson*, PR 13-0799 (granting extension because respondent needed more time to format his brief); *Matter of Genet McCann*, PR 16-0635 (granting extension for health reasons and upcoming filing schedules); *Matter of Robert Myers*, PR 17-0026 (granting extension because respondent needed more time to file objections).

Here, the Attorney General’s good cause for a 30-day extension far exceeds this minimum standard. First, ODC’s unprecedented 41-count complaint raises complex legal issues of statewide importance. Neither Respondent nor this Court will benefit from rushed briefing on those issues. Second, the Commission failed to provide this Court with *any* reasoned analysis of the legal issues at stake, meaning this Court must effectively start from scratch in deciding the legal sufficiency of ODC’s Complaint. Extending the Parties’ time to brief the nuanced legal issues at stake, ignored by the Commission, would save the Court’s resources. The Parties, not the Court, should bear the burden of researching and presenting the relevant arguments. This is compounded by the fact that the Commission denied Respondent’s request for post-hearing briefing. In other words, Respondent has not yet had the opportunity to brief the applicable legal standards or apply the facts to

the law.

Finally, procedural due process violations abound in the Commission's conduct. Respondent previously petitioned this Court for a Writ of Supervisory Control to address those issues. The Court assured Respondent he could effectively present those arguments on appeal. *See Knudsen v. Comm'n on Prac. of the Sup. Court*, No. OP 24-0595 (Oct. 8, 2024), 2024 Mont. LEXIS 1101, at \*4 ("The evidentiary errors Knudsen alleges thus may be remedied on review if the Commission has erred in its rulings."). Respondent now respectfully requests the opportunity to do so.

**A. The unprecedented 41-Count Complaint requires more time to brief.**

ODC filed a 41-count complaint against the sitting Attorney General. A complaint that ODC's counsel admits is "unprecedented" in the history of the Commission. Tr. at 422:1–6. That Complaint alleges violations of Rules 3.4(c), 5.1(c), 8.2(a), 8.4(a), and 8.4(d) of the Montana Rules of Professional Conduct. The Commission ostensibly adopted this unprecedented Complaint in its entirety, forcing the Attorney General to defend against all 41 counts on appeal.

That complicated, lengthy Complaint implicates the Montana Constitution's separation of powers, the authority of the Attorney General to take legal positions on behalf of the Legislature, and—in Respondent's view—fails to allege a professional responsibility violation under the Montana Rules of Professional

Conduct. The extensive, “unprecedented” nature of these proceedings demand—at the very least—an opportunity for the Attorney General avail himself of the same 30-day extension of time regularly granted to other litigants before this Court.

**B. The Panel failed to provide any legal analysis in its recommendation.**

The Commission used thirty-one pages to conclude that the Attorney General should be suspended from the practice of law for ninety days. But the majority of the Commission’s Recommendation either regurgitates the undisputed facts, summarizes the proceedings, or repeats truisms about the importance of the rule of law. Missing from this recommendation is any reasoned analysis of the sufficiency of ODC’s Complaint.

The Commission’s repeated failure to engage with Respondent’s central contention—that the Complaint fails to allege a violation of the Montana Rules of Conduct—at *any* stage of these proceedings, falls short of the Commission’s central duty to this Court: “to establish a record upon which this Court must act.” *Goldstein v. Comm’n on Practice of the Supreme Court*, 2000 MT 8, ¶ 21, 297 Mont. 493, 498, 995 P.2d 923, 927 (citing *Matter of Wyse*, 212 Mont. 339, 346, 688 P.2d 758, 762).

That legal record is effectively nonexistent, forcing Respondent and this Court to start from scratch. Good cause exists to grant Respondent another 30 days to brief this Court on the applicable legal standards and resulting conclusions of law.



**C. The Commission's many due process violations require extensive briefing.**

Finally, the Commission's due process errors are legion. That shouldn't surprise this Court, which already reviewed Respondent's Motion for Writ of Supervisory Control in this matter. As the Court is aware, Respondent asked this Court for that extraordinary remedy to correct violations of the Attorney General's due process rights. Among those were the Commission's actions: (1) excluding the Attorney General's evidence without allowing him to be heard; (2) deciding dispositive motions without a quorum; (3) failing to disclose conflicts of interest among the panelists; and (4) failing to exercise independent judgment in ruling against Respondent.

The errors continued during the hearing. The Panel routinely prevented the Attorney General from presenting a defense. For example, the Panel stopped the Attorney General from presenting any evidence that he believed his statements to be true during the relevant time period. *See* Tr. at 317:21–318:2 (“Just to make sure I understand, Mr. Chairman, the Complaint is alleging intemperate statements and related issues, and this evidence we’re offering to explain why those statements were made, and the ruling is that that is irrelevant to those statements?”). The Commission effectively found that the Attorney General's state of mind was irrelevant to whether he “ma[d]e a statement that [he] knows to be false or with reckless disregard as to its truth or falsity[.]” Mont. R. Prof. Resp. 8.2(a).

Good cause exists to fully brief this Court on the many errors committed by the Commission. Respondent simply requests more time to effectively brief this Court on those issues and the correct remedy.

#### **CONCLUSION**

This Court routinely grants a party's first request for a 30-day extension of time. The Attorney General has demonstrated the need for an extension of time far exceeding this Court's "good cause" standard. The gravity of these findings and recommendation counsels in favor of cautious and reasoned deliberation after effective briefing. The Court should grant Respondent's Motion.

DATED this 31st day of October, 2024.

**PARKER, HEITZ & COSGROVE, PLLC**

*/s/ Mark D. Parker*

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Mark D. Parker

*Attorneys for Respondent*

## **CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that a copy of the foregoing document was served upon the persons named below, addressed as follows:

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DATED this 31st day of October, 2024.

/s/ Larissa Sikel  
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## **CERTIFICATE OF SERVICE**

I, Mark D. Parker, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 10-31-2024:

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